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End of the Sultan of Sulu Saga? The Paris Court of Appeal Annuls the Final Award

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On December 9, 2025, the Paris Court of Appeal rendered what should be the ultimate decision in the Sultan of Sulu saga, annulling the final arbitral award that had purported to order Malaysia to pay US$ 14.92 billion to the heirs of the Sultan of Sulu. As we previously reported, the French Supreme Court's November 6, 2024 ruling had already set the stage for this decision. The decision of the Paris Court of Appeal setting aside the final award, while expected, refines the Court's reasoning and confirms the likely inapplicability of century-old colonial agreements.

Factual background

The dispute finds its origin in a 1878 agreement between the Sultan of Sulu and British and German explorers who then established the British North Borneo Company. The agreement granted that company the right to access and exploit resources in territories on the northern coast of Borneo, now part of Sabah, Malaysia, in exchange for annual payments. The agreement provided that disputes were to be referred to the British Consul General of Borneo, a function that ceased to exist in 1963. When Malaysia, the ultimate successor to the Company, ceased making payments in 2013, the heirs of the Sultan of Sulu initiated arbitration in 2017, claiming US$ 15 billion.

After the United Kingdom refused to appoint an arbitrator to fulfill the British Consul General of Borneo's role, the heirs turned to the Madrid high court, which appointed a sole arbitrator in 2019. The sole arbitrator rendered an interim award on jurisdiction in Madrid in May 2020.

However, in June 2021, the Madrid high court annulled the arbitrator's appointment due to improper service on Malaysia. Refusing to accept that annulment, the arbitrator then relocated the seat to Paris and rendered the final award on February 28, 2022, ordering Malaysia to pay US$ 14.92 billion to the heirs of the Sultan of Sulu. Malaysia applied to annul the final award before French courts, but the proceeding was stayed while the French courts ruled on Malaysia's separate challenge to the *exequatur* of the jurisdictional award. On June 6, 2023, the Paris Court of Appeal refused to grant *exequatur* to the jurisdictional award, finding the arbitration clause inapplicable, and the French Supreme Court confirmed the decision on November 6, 2024. With the stay lifted, the Paris Court of Appeal granted Malaysia's request to annul the final award on December 9, 2025.

What was the Paris Court of Appeal's reasoning to annul the final award?

While the Court of Appeal's decision to annul the final award was to be expected, the Court interestingly did not invoke the prior decisions denying *exequatur* to the jurisdictional award to justify the annulment. While the Court reached the same conclusion as in the *exequatur* proceeding, finding that the arbitration clause was not applicable, it relied on new factual elements to justify its decision—despite noting that the conditions for *res judicata* were met, that the two awards were rendered under the same arbitration clause, and that the final award explicitly referenced the jurisdictional award.

Indeed, the Court of Appeal considered that a full reexamination of the sole arbitrator's jurisdiction was warranted because the heirs of the Sultan of Sulu had invoked new facts during the proceedings, namely a letter by the Consul contemporaneous with the signing of the arbitration clause that had until then not been submitted in full.

Refining further the conclusion it had reached in the *exequatur* proceedings, the Court found that the arbitration clause in the 1878 agreement was concluded *intuitu officium*, *i.e.,* based on the specific function of the British Consul General of Borneo, and that, as a result, the parties' choice of the Consul as arbitrator was inseparable from their intention to arbitrate. Since that function had disappeared, the Court concluded that the sole arbitrator did not have jurisdiction under the parties' agreement to arbitrate because the arbitration clause was inapplicable. Therefore, the Court of Appeal annulled the final award pursuant to article 1520(1°) of the French civil procedural code ("CPC") for lack of jurisdiction.

Should the Court have relied on the prior decision refusing to grant the jurisdictional award *exequatur* to annul the final award?

The Sultan of Sulu case raises the question of the effects, if any, of the denial of *exequatur* to an interim award on subsequent annulment proceedings relating to a final award derived from it. Under Proposition No. 36 of the recent proposed reform of the French arbitration rules, article 86 would codify "annulment by necessary consequence", whereby a French court decision setting aside an award would beget annulment of any decision that constitutes its continuation, application or execution without engaging further proceedings, and refusal of *exequatur* would similarly entail the refusal of *exequatur* of any such decision.

It is unclear, however, whether the proposed article 86 (once enacted) would be applicable to a case such as this one. Indeed, the interim award on jurisdiction was rendered with Madrid as the seat of arbitration, while the final award was issued with a Paris seat. The two awards are therefore subject to different procedural regimes under French arbitration law: as a foreign award, the jurisdictional award cannot be annulled by French courts and only its *exequatur* can be challenged under article 1525 of the French CPC—which Malaysia successfully did in 2023 and 2024. The final award, which was rendered in Paris, on the other hand, can be subject only to *annulment* proceedings before the French courts, under articles 1518 and 1520 of the French CPC. While the grounds to either challenge the *exequatur* or annul are the same, the proposed article 86 does not provide for a situation where the refusal to grant *exequatur* to a foreign award entails the annulment of a French-seated award issued under the same arbitration clause—which can be attributed to the sheer rarity of such a configuration. While some believe that proposed article 86 would have applied in this case, clarification of its scope would be desirable to dissipate any doubt.

Is the Sultan of Sulu saga truly over?

The heirs of the Sultan of Sulu could still appeal the Paris Court of Appeal's annulment to the Supreme Court, but their window to do so likely expires soon—and chances of success are no doubt slim to none.

The heirs' attempts to obtain compensation under the 1878 agreement have been plentiful in different jurisdictions, though none have been successful. They initiated an investment arbitration against Spain, alleging denial of justice arising from Madrid high court's decision to annul the arbitrator's appointment, seeking US$ 18 billion in damages. On November 6, 2025, their claim was summarily dismissed by the ICSID tribunal for lack of a qualified investment under investor-state arbitration rules.

In the Netherlands, the Hague Court of Appeal refused enforcement of the final award, which the Dutch Supreme Court confirmed on September 6, 2024. Unlike the French courts, the Dutch Court of Appeal focused on the Madrid high court's decision to annul the sole arbitrator's appointment, holding that it had deprived him of any authority to issue an award. It concluded that the award was therefore not eligible for recognition under Article I(2) of the New York Convention. The Dutch Court further held that there was no valid arbitration clause because, *inter alia,* the arbitrator it provided for was not an independent third party. Indeed, because the agreement permitted transfer of certain rights only with the approval of the British government, the Dutch Court found that the British Consul General at the time would have had the interests of Britain in mind and therefore could not have been independent.

The Paris Court of Appeal's decision strongly suggests that this long-running saga has finally reached its end. But given the heirs' demonstrated willingness to test new forums, it may still be too early to call this the final chapter.

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- **Ilona Trouyet**
  Associate